

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1219

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AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-8.1-8-8.7, AS ADDED BY P.L.226-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec. 8.7. (a) The department shall operate a data match system with each financial institution doing business in Indiana.

(b) Each financial institution doing business in Indiana shall provide information to the department on all individuals:

- (1) who hold one (1) or more accounts with the financial institution; and
- (2) upon whom a levy may be issued by the department or a county treasurer.

(c) To provide the information required under subsection (b), a financial institution shall do one (1) of the following:

- (1) Identify individuals by comparing records maintained by the financial institution with records provided by the department by:
  - (A) name; and
  - (B) either:
    - (i) Social Security number; or
    - (ii) tax identification number.
- (2) Comply with IC 31-25-4-31(c)(2). The child support bureau

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established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) ~~available~~ **accessible** to the department or its agents for use only in tax judgment and levy administration.

(d) The information required under subsection (b) must:

- (1) be provided on a quarterly basis; and
- (2) include the:
  - (A) name;
  - (B) address of record; and
  - (C) either:
    - (i) the Social Security number; or
    - (ii) tax identification number;

of individuals identified under subsection (b).

(e) When the department determines that the information required under subsection (d)(2) is identical for an individual who holds an account with a financial institution and an individual against whom a levy may be issued by the department or a county treasurer, the department or its agents shall provide a notice of the match, in compliance with section 4 of this chapter, if action is to be initiated to levy or encumber the account.

(f) This section does not preclude a financial institution from exercising its right to:

- (1) charge back or recoup a deposit to an account; or
- (2) set off from an account held by the financial institution in which the individual has an interest in any debts owed to the financial institution that existed before:
  - (A) the state's levy; and
  - (B) notification to the financial institution of the levy.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in levy collection activities.

(i) A financial institution providing information required under this section is not liable for:

- (1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;
- (2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:
  - (A) the department; or

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- (B) a person or an entity acting on behalf of the department; or
- (3) any other action taken in good faith to comply with this section.

**(j) A person or an entity that is acting on behalf of the department is not liable for any action taken in good faith to collect the state's levy under this section unless:**

- (1) the action is contrary to the department's direction to the person or entity; or**
- (2) for information provided under this section, the person or entity acts with:**
  - (A) deliberate ignorance of the truth or falsity of the information; or**
  - (B) reckless disregard for the truth or falsity of the information.**

~~(j)~~ **(k)** The department or its agents shall pay a financial institution performing the data match required by this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each levy issued to the financial institution.

~~(k)~~ **(l)** This section does not prevent the department or its agents from encumbering an obligor's account with a financial institution by any other remedy available under the law.

SECTION 2. IC 22-4-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec. 1. (a) "Deductible income" wherever used in this article, means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to:

- (1) remuneration for services from employing units, whether or not such remuneration is subject to contribution under this article, except as provided in subsection (c);
- (2) dismissal pay;
- (3) vacation pay;
- (4) pay for idle time;
- (5) holiday pay;
- (6) sick pay;
- (7) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;
- (8) net earnings from self-employment;
- (9) payments in lieu of compensation for services;
- (10) awards by the national labor relations board of additional pay, back pay, or for loss of employment, or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; or

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(11) payments made to an individual by an employing unit pursuant to the terms of the Fair Labor Standards Act (Federal Wage and Hour Law, 29 U.S.C. 201 et seq.);

**(12) for a week in which a payment is actually received by an individual, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure; or**

**(13) except as provided in subsection (c)(2), the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:**

**(A) occurs after an individual receives the payment; and**

**(B) was used under the terms of a written agreement to compute the payment.**

(b) Deductible income shall not include the first three dollars (\$3), or twenty percent (20%) of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger, of remuneration paid or payable to an individual with respect to any week by other than ~~his~~ **the individual's** base period employer or employers.

(c) For the purpose of deductible income only, remuneration for services from employing units does not include:

**(1) bonuses, gifts, or prizes awarded to an employee by an employing unit; or**

**(2) compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.**

**(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.**

SECTION 3. IC 22-4-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec.

1. **(a) Except as provided in IC 22-4-5-1 or subsection (b) or (c), an unemployed individual shall be eligible to receive benefits with respect to any week only if ~~He~~ the individual has made a claim for benefits in accordance with the provisions of IC 1971, 22-4-17-1 hereof: Provided, however, That IC 22-4-17.**

**(b) A person accepting who:**

**(1) accepts a layoff under an inverse seniority clause of a validly negotiated contract; ~~be~~ and**

**(2) otherwise meets the eligibility requirements established by**

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**this article;**

**is entitled to ~~all~~ receive benefits in the same amounts, under the same terms, and subject to the same conditions** as any other unemployed person. ~~under the terms of this article. Provided, That he meets the other requirements of this article.~~

**(c) This subsection does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments. Except as provided in IC 22-4-5-1, a person who:**

**(1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and**

**(2) otherwise meets the eligibility requirements established by this article;**

**is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.**

SECTION 4. IC 22-4-25-1, AS AMENDED BY P.L.2-2007, SECTION 293, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec. 1. (a) There is created in the state treasury a special fund to be known as the special employment and training services fund. All interest on delinquent contributions and penalties collected under this article, together with any voluntary contributions tendered as a contribution to this fund, shall be paid into this fund. The money shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would in the absence of said money be available to finance expenditures for the administration of this article, but nothing in this section shall prevent said money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The money in this fund shall be used by the board for the payment of refunds of interest on delinquent contributions and penalties so collected, for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the employment and training services administration fund, on and after July 1, 1945. Such money shall be available either to satisfy the obligations incurred by the board directly, or by transfer by the board of the required amount from the special employment and training services fund to the employment and training

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services administration fund. No expenditure of this fund shall be made unless and until the board finds that no other funds are available or can properly be used to finance such expenditures; except that expenditures from said fund may be made for the purpose of acquiring lands and buildings or for the erection of buildings on lands so acquired which are deemed necessary by the board for the proper administration of this article. The board shall order the transfer of such funds or the payment of any such obligation or expenditure and such funds shall be paid by the treasurer of state on requisition drawn by the board directing the auditor of state to issue the auditor's warrant therefor. Any such warrant shall be drawn by the state auditor based upon vouchers certified by the board or the commissioner. The money in this fund is hereby specifically made available to replace within a reasonable time any money received by this state pursuant to 42 U.S.C. 502, as amended, which, because of any action or contingency, has been lost or has been expended for purposes other than or in amounts in excess of those approved by the bureau of employment security. The money in this fund shall be continuously available to the board for expenditures in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as provided in this article. Nothing in this section shall be construed to limit, alter, or amend the liability of the state assumed and created by IC 22-4-28, or to change the procedure prescribed in IC 22-4-28 for the satisfaction of such liability, except to the extent that such liability may be satisfied by and out of the funds of such special employment and training services fund created by this section.

(b) The board, subject to the approval of the budget agency and governor, is authorized and empowered to use all or any part of the funds in the special employment and training services fund for the purpose of acquiring suitable office space for the department by way of purchase, lease, contract, or in any part thereof to purchase land and erect thereon such buildings as the board determines necessary or to assist in financing the construction of any building erected by the state or any of its agencies wherein available space will be provided for the department under lease or contract between the department and the state or such other agency. The commissioner may transfer from the employment and training services administration fund to the special employment and training services fund amounts not exceeding funds specifically available to the commissioner for that purpose equivalent to the fair, reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and maintenance

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thereof as was expended from the special employment and training services fund has been returned to such fund:

(c) The board may also transfer from the employment and training services administration fund to the special employment and training services fund amounts not exceeding funds specifically available to the commissioner for that purpose equivalent to the fair, reasonable rental value of space used by the department in any building erected by the state or any of its agencies until such time as the department's proportionate amount of the purchase price of such building and the department's proportionate amount of such cost of repair and maintenance thereof as was expended from the special employment and training services fund has been returned to such fund:

(d) (b) Whenever the balance in the special employment and training services fund is deemed excessive by the board, the board shall order payment into the unemployment insurance benefit fund of the amount of the special employment and training services fund deemed to be excessive.

(e) (c) Subject to the approval of the board **and the availability of funds, on July 1, 2008, and each subsequent July 1, the commissioner may use not more than five shall release:**

(1) **one million dollars (\$5,000,000) during a program year for (\$1,000,000) to the state educational institution established under IC 21-25-2-1 for training provided by Ivy Tech Community College to participants in joint labor and management apprenticeship programs approved by the United States Department of Labor's Labor, Bureau of Apprenticeship and Training; Of the money allocated for training programs under this subsection, fifty percent (50%) is designated for industrial programs; and the remaining fifty (50%) percent is designated for building trade programs.**

(2) **four million dollars (\$4,000,000) to the state educational institution instituted and incorporated under IC 21-22-2-1 for training provided to participants in joint labor and management apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training; and**

(3) **two hundred fifty thousand dollars (\$250,000) for journeyman upgrade training to each of the state educational institutions described in subdivisions (1) and (2).**

**Each state educational institution described in this subsection is entitled to keep ten percent (10%) of the funds released under this subsection for the payment of costs of administering the funds. On**

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each June 30 following the release of the funds, any funds released under this subsection not used by the state educational institutions under this subsection shall be returned to the special employment and training services fund.

SECTION 5. IC 22-4-29-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: **Sec. 14. (a) The department may operate a data match system with each financial institution doing business in Indiana.**

**(b) If the department operates a data match system, each financial institution doing business in Indiana shall provide information to the department on all employers:**

- (1) that hold one (1) or more accounts with the financial institution; and**
- (2) that are subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs.**

**(c) To provide the information required under subsection (b), a financial institution shall do one (1) of the following:**

**(1) Identify employers by comparing records maintained by the financial institution with records provided by the department by:**

- (A) name; and**
- (B) either:**
  - (i) Social Security number; or**
  - (ii) federal tax identification number.**

**(2) Comply with IC 31-25-4-31(c)(2). The child support bureau established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) accessible to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).**

**(d) The information required under subsection (b) must:**

- (1) be provided on a quarterly basis; and**
- (2) include:**
  - (A) the name;**
  - (B) the address of record; and**
  - (C) either:**
    - (i) the Social Security number; or**
    - (ii) the federal tax identification number;**

**of the employers identified under subsection (b).**

**(e) When the department determines that the information required under subsection (d)(2) is identical for an employer that**

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holds an account with a financial institution and an employer that is subject to a warrant issued by the commissioner for failure to pay a final assessment for contributions, interest, penalties, and any associated collection costs, the department or its agents shall provide a notice of the match to the financial institution if action is to be initiated to issue a warrant to levy upon or encumber the account.

(f) This section does not preclude a financial institution from exercising its right to:

- (1) charge back or recoup a deposit to an account; or
- (2) set off from an account held by the financial institution in which the employer has an interest any debts owed to the financial institution that existed before:
  - (A) the department's warrant; and
  - (B) notification to the financial institution of the department's warrant.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in the collection of unpaid final assessments described in subsection (b)(2).

(i) A financial institution providing information required under this section is not liable for:

- (1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;
- (2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:
  - (A) the department; or
  - (B) a person or an entity acting on behalf of the department; or
- (3) any other action taken in good faith to comply with this section.

(j) A person or an entity that is acting on behalf of the department is not liable for any action taken under this section in good faith to collect unpaid final assessments described in subsection (b)(2) unless:

- (1) the action is contrary to the department's direction to the person or entity; or
- (2) for information provided under this section, the person or

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entity acts with:

(A) deliberate ignorance of the truth or falsity of the information; or

(B) reckless disregard for the truth or falsity of the information.

(k) The department or its agents shall pay a financial institution performing the data match under this section a reasonable fee, as determined by the department, of at least five dollars (\$5) for each warrant issued to the financial institution.

(l) This section does not prevent the department or its agents from encumbering an employer's account with a financial institution by any other remedy available under the law.

(m) An:

(1) officer or employee of the department; or

(2) officer or employee of a person or entity that is acting on behalf of the department;

who knowingly or intentionally discloses for a purpose other than the collection of unpaid final assessments described in subsection (b)(2) information provided by a financial institution that is confidential under this section commits a Class A misdemeanor.

SECTION 6. IC 22-4-31-6, AS AMENDED BY P.L.108-2006, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec. 6. (a) If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the department. Such civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through ~~IC 22-4-29-12~~ **IC 22-4-29-14** and is to be brought only in such cases as the department may deem advisable in the interest of necessity and convenience.

(b) Unless the employing unit prevails in a civil action brought under this chapter, the court may award costs, including reasonable attorney's fees, incurred by the state in bringing the action.

SECTION 7. IC 31-25-4-31, AS AMENDED BY P.L.103-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: Sec. 31. (a) The bureau shall operate a data match system with each financial institution doing business in Indiana.

(b) Each financial institution doing business in Indiana shall provide information to the bureau on all noncustodial parents who:

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- (1) hold one (1) or more accounts with the financial institution; and
  - (2) are delinquent.
  - (c) In order to provide the information required under subsection (b), a financial institution shall either:
    - (1) identify noncustodial parents by comparing records maintained by the financial institution with records provided by the bureau by:
      - (A) name; and
      - (B) either Social Security number or tax identification number; or
    - (2) submit to the bureau a report, in a form satisfactory to the bureau, that includes the Social Security number or tax identification number of each individual maintaining an account at the financial institution. **The reports submitted under this subdivision must be accessible to:**
      - (A) the department of state revenue established by IC 6-8.1-2-1 or its agents for use only in tax judgment and levy administration described in IC 6-8.1-8-8.7(b)(2); or
      - (B) the department of workforce development established by IC 22-4.1-2-1 or its agents for use only in the collection of unpaid final assessments described in IC 22-4-29-14(b)(2).
  - (d) The information required under subsection (b) must:
    - (1) be provided on a quarterly basis; and
    - (2) include the:
      - (A) name;
      - (B) address of record; and
      - (C) either the Social Security number or tax identification number;
- of an individual identified under subsection (b).
- (e) When the bureau has determined that the information required under subsection (d)(2) is identical for an individual who holds an account with a financial institution and an individual whose name appears on the quarterly list prepared by the bureau under section 30 of this chapter, the bureau shall provide a notice of the match if action is to be initiated to block or encumber the account by establishing a lien for child support payment to the:
    - (1) individual; and
    - (2) financial institution holding the account.
  - (f) The notice under section (e) must inform the individual that:
    - (1) the individual's account in a financial institution is subject to

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a child support lien; and

(2) the individual may file an appeal with the bureau within twenty (20) days after the date the notice was issued.

(g) The bureau shall hold a hearing under 470 IAC 1-4. The department's final action following a hearing held under this subsection is subject to judicial review as provided in 470 IAC 1-4.

(h) The state's lien on assets under this section is subordinate to any prior lien perfected by:

- (1) a financial institution; or
- (2) another legitimate lien holder.

(i) A lien issued under this section remains in effect until the earliest of:

- (1) one hundred twenty (120) days after issuance;
- (2) the date the asset on which the lien is issued is surrendered; or
- (3) the date the lien is released by an action of the bureau.

(j) This section does not preclude a financial institution from exercising its right to:

- (1) charge back or recoup a deposit to an account; or
- (2) set off from an account held by the financial institution in which the noncustodial parent has an interest in any debts owed to the financial institution that existed before:
  - (A) the state's lien; and
  - (B) notification to the financial institution of the child support delinquency.

(k) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(l) All information provided by a financial institution under this section is confidential and is available only to the bureau or its agents for use only in child support enforcement activities.

(m) A financial institution providing information required under this section is not liable for:

- (1) disclosing the required information to the bureau, **the department of state revenue established by IC 6-8.1-2-1, or the department of workforce development established by IC 22-4.1-2-1;**
- (2) blocking or surrendering any of an individual's assets in response to a lien imposed by:
  - (A) the bureau under this section; or
  - (B) a person or entity acting on behalf of the bureau; or
- (3) any other action taken in good faith to comply with this

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section.

(n) The department shall pay a financial institution performing the data match required by this section a reasonable fee for providing the service that does not exceed the actual cost incurred by the financial institution.

(o) This section does not prevent the bureau or its agents from encumbering an obligor's account with a financial institution by any other remedy available for the enforcement of a child support order.

SECTION 8. IC 34-30-2-16.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: **Sec. 16.8. IC 6-8.1-8-8.7 (Concerning actions taken to collect tax judgments and levies).**

SECTION 9. IC 34-30-2-86.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)]: **Sec. 86.7. IC 22-4-29-14 (Concerning actions taken to collect unemployment insurance assessments).**

SECTION 10. [EFFECTIVE MARCH 15, 2008 (RETROACTIVE)] **IC 22-4-5-1 and IC 22-4-14-1, both as amended by this act, apply to initial claims for unemployment filed for weeks that begin after March 14, 2008.**

SECTION 11. **An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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